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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 10 Original

STATE OF ARIZONA

v.

STATE OF CALIFORNIA, ET AL.

REJOINDER OF DEFENDANTS TO COMPLAINANT'S REPLY TO DEFENDANTS' ANSWER

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Defendants, by their duly authorized attorneys, jointly make the following Rejoinder to Complainant's Reply to Defendants' Answer herein.

1.

As to the new allegations contained at page 4 of Complainant's Reply, to the effect that on or about November 18, 1922, at Santa Fe, New Mexico, the provisions of Article III (b) of the Colorado River Compact were prepared and inserted in said Compact solely and entirely for the purpose of recognizing the use by Arizona of approximately

1,000,000 acre-feet per year of water of the Gila River, and that such was the understanding of the Arizona Commissioner, defendants allege and deny as follows:

(a) Defendants allege that evidence of the said alleged understanding was held by this Court in *Arizona* v. *California*, 292 U. S. 341 (1934), to be inadmissible to contravene the terms of the Colorado River Compact, and further allege that Appendixes 2, 3, 4 and 6 annexed to the Reply are substantially the same evidence as was sought to be perpetuated in that case by Arizona.

(b) The Complaint and Arizona's Reply fail to allege that any such alleged understanding was ever communicated to the legislature of any State or to the Congress. Defendants allege: Neither the Congress which approved the Colorado River Compact nor the Legislatures of the States which ratified said Compact were advised of Complainant's present contention that the water referred to in Article III (b) was earmarked by the Colorado River Commissioners for Arizona as distinguished from the states of the Lower Basin collectively, and this contention was not asserted in any form until many years after the Legislatures of Colorado, Wyoming, Utah, New Mexico, California, and Nevada had ratified, and the Congress had granted its consent to, the Colorado River Compact. For said reasons, evidence of any such understanding as is alleged in the said Reply would be inadmissible for any purpose in this case.

(c) If the understandings or purposes of the Colorado River Commissioners at Santa Fe in November 1922 should be deemed material, relevant or competent, defendants deny that said Commissioners or any

of them prepared or inserted the provisions of Article III (b) in the Colorado River Compact solely or entirely for the purpose of recognizing Arizona's use of 1,000,000 acre-feet or any other amount of water of the Gila River. To the contrary, defendants allege as follows: The Colorado River Commissioners intended and understood that the provisions of Article III(b) of the Colorado River Compact related to the use of the waters of the Colorado River System as a whole and not to any specific part thereof such as the Gila River or its tributaries, and said Commissioners further intended and understood that the increase of use of 1,000,000 acre-feet per annum referred to in Article III (b) was made available for use in the Lower Basin States collectively and not in any one State individually. Defendants further allege that the express provisions of the Colorado River Compact are in accordance with said intentions and understandings of said Commissioners.

2.

As to the new allegations contained at pages 7 and 8 of Complainant's Reply under the heading "Action by Arizona on the Proposed Tri-State Compact", defendants deny that the Arizona Legislature in 1939 or at any other time ratified the Tri-State Compact authorized by Paragraph 2 of Section 4(a) of the Boulder Canyon Project Act. The proposed Tri-State Compact which Complainant alleges it ratified, as the same appears in Appendix 7 to the Reply, differs materially from the terms of the Tri-State Compact authorized by Paragraph 2 of Section 4(a) of the Boulder Canyon Project Act (Appendix 2 to California's Answer) especially as follows: Whereas the Tri-State Compact authorized by the Boulder Canyon

Project Act would allot to Arizona the use of 2,800,000 acre-feet per year of water apportioned to the Lower Basin by Article III (a) of the Colorado River Compact and one-half of the excess or surplus water unapportioned by the Colorado River Compact, which said allotment to Arizona would by definition include the water of the Gila River and its tributaries, the proposed Tri-State Compact allegedly ratified by Arizona would allot to that State the use of the water of the Gila River and its tributaries "in addition to" (rather than as part of) 2,800,000 acre-feet per annum of water, the use of which is apportioned by Article III (a), and one-half of the excess or surplus water.

3.

As to Appendixes 2, 3, 4 and 6 to the Complainant's Reply, which said Appendixes purport to contain excerpts from testimony and evidence presented to various committees of the 79th, 80th and 81st Congresses of the United States in the years 1946, 1947 and 1949, defendants allege and deny as follows:

(a) The alleged testimony and evidence contained in said appendixes were held inadmissible by this Court in *Arizona* v. *California*, 292 U. S. 341 (1934).

(b) The testimony and evidence contained in said Appendixes are inadmissible in evidence, being incompetent, immaterial, and irrelevant to the issues of this case, in violation of the rules against the admission of hearsay evidence, and in violation of the parol evidence rule as in contravention of the Colorado River Compact.

(c) The Complaint and Reply fail to allege that the testimony and evidence contained in said appendixes were communicated to, presented to, or consid-

ered by the Congress which granted consent to the Colorado River Compact or the legislature of any State which ratified said Compact, and defendants allege that in fact, said testimony and evidence were not so communicated, presented, or considered.

(d) Defendants deny that the testimony contained in said Appendixes is in any way an accurate account of the facts and events referred to in said testimony.

4.

Reserving the right to object to the competency, materiality and relevancy of the allegations of Complainant's Reply and the Appendixes thereto, defendants deny all allegations of said Reply and the Appendixes thereto except as said allegations conform to the facts as alleged in Defendants' Answer and in this Rejoinder.

PRAYER

WHEREFORE, defendants pray:

1. That the Court decree that Complainant take nothing by its pleadings herein, and that defendants recover their costs and disbursements herein expended.

2. That the Court grant to the defendants such other and further relief as to the Court may seem meet and proper.

Respectfully submitted,

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